

MEMORANDUM OF LAW

DATE: December 9, 1985

TO: Ed Ryan, City Auditor & Comptroller

FROM: City Attorney

SUBJECT: Job Duties of Center Directors of Various
Recreation Centers as they Relate to Recreation
Councils (Nonprofit Organizations)

In response to your memorandum of September 24, 1985, this office has considered the issue of whether recreation center directors may legally perform job duties for recreation councils, which are private nonprofit organizations, without such services constituting a gift of public funds. You further asked to what extent is the City liable for functions of the councils or their employees conducting private activities on City premises.

To respond properly to your concerns requires some background on the function and nature of recreation councils.

Unfortunately, there is no ordinance or administrative regulation which specifically addresses "recreation councils," although Council Policy No. 700-42, attached, addresses "Park and Recreation Advisory Councils."

In a Memorandum of Law dated April 28, 1983, copy attached, a recreation council was defined as "an unincorporated association independent of City which was formed . . . for the purpose of assisting the Park and Recreation Department of the City in promoting, planning, publicizing, coordinating and interpreting its community recreation programs." (Emphasis added). The memorandum and its attachment addressed the status of these councils regarding the Brown Act and the City's liability for their activity. Although the memorandum recognized the nonpublic or private status of the councils, it was clear that these councils served a public purpose.

Mary Ann Oberle, Deputy Director, Park and Recreation Department, advises that 31 recreation councils operate under the Park and Recreation Board, an advisory group, but are functionally considered part of the Park and Recreation

Department because of the wide variety of public recreation services they provide and administer. In essence, they are volunteer organizations that operate public recreation programs

under a special use permit for the City. The recreation councils charge user fees for programs, hire instructors, pay the City a use fee, and return any surplus funds to the respective council recreation program fund.

Frequently, members of the recreation councils are not available to sign up and collect user fees from the public, but the center directors are. The Park and Recreation Department has permitted recreation center directors, who are paid City employees, to administer fee collections on behalf of the recreation councils as a matter of convenience. This authority is apparently not memorialized. It is clear, however, that this assistance to the recreation councils directly contributes to the fulfillment of an essential mission of the Park and Recreation Department to provide recreation services to the public. It is likewise clear that the recreation councils also serve a public purpose by providing the recreation services. Therefore, the expenditure of time by the recreation center directors in collecting fees and providing related administrative support services would not constitute a gift of public funds under these circumstances where a public purpose is served. See generally, *California Housing Finance Agency v. Elliott*, 17 Cal.3d 575, 583, 131 Cal.Rptr. 361 (1976); *County of Alameda v. Carleson*, 5 Cal.3d 730, 745-746, 97 Cal.Rptr. 385 (1971).

The answer to the second question respecting the City's liability is addressed in the attached Memorandum of Law and in the special use permits. The City has agreed, as a matter of policy, to assume liability for the actions of the recreation councils that are in support of the policy guidelines of the City. This policy is consistent with Council Policy No. 700-42. If the recreation councils conduct their activities in support of policy guidelines, they are not conducting "private" activities, but are conducting activities on behalf of the City. Conversely, if they are not supporting the policy guidelines, the activities are not protected, liability-wise, in so far as the City's policy to defend and indemnify is concerned.

This memorandum reaches these conclusions only because of the factual relationships identified here. The answers to your questions would likely be different for other private nonprofit organizations that do not serve a public purpose.

The difficulty in responding directly to your concerns is the absence of formal recognition of the recreation council concept.

The special use permit authorizes recreation councils to function, but it does not delineate the relationship implicit in the organizational practice of the Park and Recreation Department. Such practice should be memorialized either by

administrative regulation or through enactment of an ordinance,
or combination thereof.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mem:260(x043.2)

Attachment

cc George Loveland

ML-85-93